



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC-2016-0185]

Processing Fitness-for-Duty Drug and Alcohol Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comments on proposed revisions to its Enforcement Policy (the Policy). The NRC is proposing to revise Section 4.1, “Considerations in Determining Enforcement Actions Involving Individuals,” of the Policy to indicate that the NRC typically will not consider Fitness-for-Duty (FFD) Drug and Alcohol (D&A) related violations for enforcement unless the licensee’s FFD program has apparent deficiencies.

DATES: Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0185. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: David Furst, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7634, e-mail: David.Furst@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2016-0185 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0185.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdresource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2016-0185 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On January 31, 2016, the NRC staff submitted to the Commission SECY-16-0009, “Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities,” dated January 31, 2016 (ADAMS Package Accession No. ML16028A189). Item 101 in Enclosure 1 of SECY-16-0009 included the NRC staff’s recommendations for creating efficiencies in the Enforcement Process, in part by reducing FFD case processing.

In developing potential efficiencies in the enforcement program, the NRC staff concluded that not processing routine cases involving D&A issues would reduce NRC staff resources without impacting safety, as discussed more fully below.

The Commission approved the NRC staff’s recommendation to reduce FFD case processing in the Staff Requirements Memorandum for SECY-16-0009, dated April 13, 2016 (ADAMS Accession No. ML16104A158).

Part 26 of title 10 of the *Code of Federal Regulations* (10 CFR) requires licensees to establish D&A testing programs and report test results to the NRC. The NRC’s Office of Investigations (OI) investigates FFD D&A cases, many of which involve an individual who violates FFD D&A procedures at a site. Typically, the licensee has identified the issue and conducted an internal investigation yielding evidence of an FFD D&A violation by the time they notify the NRC. In most cases, pursuant to 10 CFR part 26, the site FFD D&A policy provides

penalties for specific violations. The NRC believes that individual FFD D&A issues generally are dispositioned by the licensee according to the programs in place. Therefore, NRC staff review of individual FFD D&A cases appears to be an area where the NRC can make efficiency gains. The NRC is proposing changes to the enforcement process with respect to FFD D&A cases where an individual violates the site FFD D&A procedure, but where there is no breakdown in the performance of the FFD process itself.

On March 31, 2008 (73 FR 16965), the NRC amended 10 CFR part 26, in part, to strengthen the D&A testing requirements and broaden the scope of D&A testing to other NRC licensees (e.g., owner operators of uranium fuel fabrication facilities) and to persons who perform safety or security-significant activities within the protected areas (PA) of these sites. The NRC implemented an electronic reporting (e-reporting) system to simplify and improve FFD data reporting and to enable the reporting of additional voluntary information to the NRC.

Based on the FFD performance information reported electronically to the NRC since 2009 and a comparison of this information to previous years and other indicators, the commercial nuclear industry continues to effectively implement the 10 CFR part 26 D&A provisions and FFD program results have directly contributed to public health and safety and the common defense and security. Licensees identify persons under the influence of illicit drugs and/or alcohol and remove them from the PA of NRC-licensed facilities, and licensees identify persons of questionable trustworthiness and reliability, in part, through rigorous testing methods (e.g., limit-of-detection testing, cutoffs, and effective monitoring during specimen collections). These outcomes provide reasonable assurance that persons who perform safety or security-significant activities, or who have unescorted access to certain NRC-licensed facilities, information, or material, are fit-for-duty, and that the public and the NRC are timely informed of FFD performance. The data indicates no adverse trends.

Since March 31, 2008, when the NRC amended 10 CFR part 26, the NRC has processed approximately 40 FFD D&A related cases in which OI investigated instances of

individuals violating FFD D&A procedures at licensee sites. These types of cases result from a range of issues including failed drug tests, alleged attempts to subvert FFD testing, alleged possession or use of illegal drugs or alcohol, or alleged misuse or failure to report the use of prescription drugs. Typically the issues are discovered, investigated by, and reported to the NRC by licensees using the e-reporting system. By the time the NRC implements the process to investigate, the licensees have imposed the appropriate 10 CFR part 26 sanctions.

In many regards, 10 CFR part 26 is unique in comparison to other 10 CFR regulations; for example, explicit sanctions are specified for individuals who violate FFD policy. Section 26.75, "Sanctions," specifies, in part, the minimum sanctions that licensees and other entities shall impose when an individual has violated the D&A provisions of their FFD policy (e.g., immediate unfavorable termination of the individual's authorization for at least 14 days for the first violation and 5 years for the second violation, and permanent denial of access for any act or attempted act to subvert the testing process). The requirement also states that the licensee or other entity may impose more stringent sanctions.

A limited exception to the proposal to not process FFD cases is when NRC staff identifies an apparent breakdown of the licensee's FFD program itself. Any case involving an alleged breakdown of the FFD program itself would be reviewed and considered for an NRC enforcement sanction.

III. Proposed Revisions

The NRC can gain efficiency in its enforcement program if it elects to no longer pursue D&A cases; this process change is possible because 10 CFR 26.75 already requires licensees to disposition individual violations of their FFD D&A procedures. This process change could be implemented by adding the following paragraph at the end of Section 4.1, "Considerations in Determining Enforcement Actions Involving Individuals:"

The NRC typically will not consider FFD drug and alcohol related violations for enforcement action unless there is an apparent deficiency of the licensee's FFD program.

The proposed revision to the Policy is available in ADAMS under Accession No. ML16197A561.

Dated at Rockville, Maryland, this 29th day of September, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

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